EMERGENCE OF PRE PACK INSOLVENCY RESOLUTION PROCESS IN INDIA: A COMPARATIVE ANALYSIS

SHORT SYNOPSIS

Submitted in partial fulfillment of the requirement of the degree of

DOCTOR OF PHILOSOPHY

by

NEHA CHAUHAN
Registration No. MRULWDN012K210023

Under the supervision of

Dr. Ghazala Abidin
Associate Professor, School of Law

Department of Law
School of Law

MANAV RACHNA UNIVERSITY

Year 2026

MANAV RACHNA UNIVERSITY

MANAV RACHNA UNIVERSITY

Date: 27.02.2026

DECLARATION BY THE SCHOLAR

I hereby declare that the short synopsis entitled **Emergence of Pre-Pack Insolvency Resolution Process In India : A Comparative Analysis** being submitted in partial fulfillment of the requirement for the degree of Doctor of Philosophy in the Department of Law under the School of Law of Manav Rachna University, Faridabad during the academic year 2025-26.

It is the work that is expected to be carried out under the supervision of Dr. Ghazala Abidin.

Further, it is declared that the short synopsis is within the plagiarism limit and a copy of the same is attached as per the University norms.

(Name and Signature of the Scholar)
Registration Number
MRULWDN012K210023

MANAV RACHNA UNIVERSITY

MANAV RACHNA UNIVERSITY

Date: 27-02-2026

CERTIFICATE BY SUPERVISOR(S)

This is to certify that, the short synopsis entitled **Emergence of Pre-Pack Insolvency Resolution Process In India : A Comparative Analysis** is an original piece of work done by research scholarNehaChauhan under the supervision of Dr. Ghazala Abidin for the degree of Doctor of Philosophy in the Department of Law under the School of Law of ManavRachna University, Faridabad during the academic year 2025-26.

Further, it is certified that the short synopsis is within the plagiarism limit and a copy of the same is attached as per the University norms.

27/2/26

Signature of the Supervisor
(Dr. GhazalaAbidin)
Associate Professor

ABSTRACT

A restructuring process known as pre-packaged bankruptcy allows the debtor and creditors to come to an agreement on a resolution plan before formally beginning insolvency proceedings. The United States, the United Kingdom, and Australia are among the many nations that have adopted this model, which is based on the UNCITRAL Model Law, as part of their legal frameworks in an effort to find a middle ground between the interests of creditors and debtors. While there are many positive aspects to the procedure, there are also some negative aspects, such as worries about lack of transparency and the potential exclusion of operational creditors.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, formally known as the IBC Amendment Act, 2021, established prepack insolvency in India. As a response to the COVID-19 pandemic, the Indian government implemented a prepack framework that enables eligible corporate debtors to submit a basic plan to creditors and, once approved, begin proceedings before the National Company Law Tribunal (NCLT). Nevertheless, there are still questions about who does what and how stakeholders are protected.

This study is to be completed through the doctrinal method of research. Additionally, a comparative analysis will be done with the developed economies i.e. (UK and US). By evaluating the strengths, weaknesses, and unique policy interventions in each jurisdiction, the study aims to identify best practices and suggest reforms for the Indian context. , the study aims to provide actionable recommendations for policymakers, regulators, and practitioners to enhance the implementation and effectiveness of pre-pack insolvency in India. These recommendations will focus on improving legal and regulatory frameworks, increasing transparency and stakeholder trust, and ensuring that the process is fair and equitable for all parties involved.

Keywords: Anti-competitive practices, India, Market integrity, MSMEs, Pre-pack insolvency, Regulatory framework

CONTENTS

S. No.	Description	Page No.
	Cover Page	i
	Declaration by Scholar	ii
	Certificate by Supervisor(s)	iii
	Abstract	iv
	Table of Contents	v
1	Introduction	1-5
2	Literature Review	6-18
3	Rationale/ Significance of the Study	19
4	Problem Statement	20-25
5	Objectives of Research	26
6	Methodology	27
7	Expected outcome of the Research	28
8	References	29-31
9	Similarity Verification Report	

1. INTRODUCTION

When a financially troubled corporation is ready to sell off its assets or company to a new owner or a group of investors before formally declaring bankruptcy, it's going through prepack insolvency, which is also called prepack administration. However, a pre-pack is sort of a restructuring plan between a debtor and a creditor, which is settled upon prior to the filing of the insolvency. This kind of business rescue is a compromise between the interest of debtor and creditors. [1] In this way, the management and ownership of a company can be handed over easily, and, therefore, this approach will assist in maintaining employees at work and the peaceful relations with suppliers and clients. A much better option to the conventional approaches to insolvency like administration or liquidation would be to use prepack bankruptcy that would be time consuming, costly and would end up disposing of the assets of the firm.

The UN commission on the International Trade Law also dealt with the prepack insolvency issue. UNCITRAL has been on the forefront in drafting and regulations on prepack insolvency law. It also in 2013 embraced UNCITRAL Model Law on Cross-border insolvency which provides plans of insolvency which pre packages be recognised and enforced in different jurisdictions. This law has been being adopted by different countries including the United States, the United Kingdom and Australia and it is what has facilitated the finding of the use of the prepack insolvency in the cross-border transactions.

UNCITRAL has also come up with a guide towards the implementation of the model law in that it would provide practical advice to countries who have the intention of adopting the model law in their legitimate systems. Among the main questions to be answered by the Guide are issues of the applicability of the Model Law, recognition of foreign insolvency proceedings, cross-border enforcement of pre-packaged resolution plans, etc. Combined, this effort by UNCITRAL has been of significant importance in promoting pre-pack insolvency to the international community as a real option to use when businesses need serious financial

[1] Himani Singh, 'Pre-packaged Insolvency in India: Lessons from USA and UK', (2002) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3518287 .

help. Via its efforts, UNCITRAL has helped to establish more streamlined and outcome-focused insolvency mechanisms which are also beneficial to promoting greater legal coherence and uniformity in the area of international trade.

As the globalization process accelerates, and more economic interdependence is achieved, the topicality of the work of UNCITRAL will only grow. With the commercial activities constantly crossing national borders, the organization will probably be instrumental in the development of the international trade and insolvency systems which would allow cross-border economic stability and co-operation.

Pre-pack insolvency, in its turn, is a relatively new phenomenon in the insolvency practice, whose origins can be dated back to the 1980s in the United States. It came as a strategic reaction to a breakout of corporate failure that was prompted by rampant financial turmoil at the time. This restructuring mechanism has had significant momentum over time and has moved out of the United States domestic solution to an internationally accepted way of rescuing shot enterprises.

Packaged reorganisations The amendments to the US Bankruptcy Code in 1978 to offer a pre-packaged reorganisation gave birth to prepack insolvency. Pre-plan sales are authorized by Section 363 of the US Bankruptcy Code, the Chapter 11 by Chapter 11 which permits pre-arranged what is known as a pre-packaged bankruptcy procedures and also provision of pre-planned bankrupting by Section 363.[2] This provision was to give companies an opportunity to reduce the bankruptcy process and the effects it has on their operations by suggesting a restructuring plan to their creditors prior to the company declaring bankruptcy. Although there were good intentions there was very little implementation done on the provision and hence most of the prepackaged reorganisations were not provisioned during the years after the provision.

[2] US Courts, Chapter 11 – Bankruptcy Basics, US COURTS (2019), https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics.

It had taken until the late 1980s to become common knowledge that prepack insolvency is a realistic restructuring tool. In this time frame, various high profile firms such as Texaco, LTV Corporation and Revco attempted to reorganize their business using the prepack insolvency but with mixed level of success.[3] Those examples showed that prepack insolvency can be quite advantageous in a sense that the restructuring process will be more rapid and cost-efficient, which will enable a greater degree of control over the assets sale, as well as, allow saving on the lost jobs and connections with suppliers and customers.

These initial prepack cases were successful, which led to further innovation in the area of insolvency with lawyers and financial advisers formulating new approaches and methods of structuring prepack deals. The restructuring of operations of companies in different industries, such as airlines, retail, and healthcare, became increasingly regular in the United States of America in the 1990s when companies started to seek prepack insolvency as an option due to the economy problems.[4]

One notable example of prepack insolvency during this period was the restructuring of Continental Airlines in 1993.[5] The restructuring of Continental Airlines in 1993 is considered one of the most successful turnarounds in the history of the airline industry. At the time, Continental was struggling with financial difficulties, a tarnished reputation, and poor employee morale. However, under the leadership of CEO Gordon Bethune, the airline was able to implement a successful restructuring plan that transformed the company into a profitable and respected carrier.[6] The first step in the restructuring of Continental Airlines was to address the company's financial difficulties. Bethune negotiated with the airline's creditors to reduce the company's debt and extend its repayment schedule. He also secured new financing from investors, which provided the company with the capital it needed to invest in new aircraft and other critical infrastructure. After years of financial losses and

[3] Michelle Harner, "The Corporate Governance and Public Policy Implications of Activist Distressed Debt Investing Activist Distressed Debt Investing", 77 *Fordham Law Review* 703-773 (2008).
[4] Vidhi Centre for Legal Policy, Designing a Framework for Pre-Packaged Insolvency Resolution in India Some Ideas for Reform (February, 2020).
[5] 203 F.3d 203 (3d Cir. 2000)
[6] Nitin Nohria, Anthony Mayo and Mark Benson, "Gordon Bethune at Continental Airlines", *Harvard Business School Case* (2006).

bankruptcy, Continental proposed a prepackaged reorganization plan to its creditors, which included a reduction in debt and a new labor agreement with its employees. The bankruptcy court agreed to the plan within very two months and Continental was finding itself out of the bankruptcy more competitive and stronger than earlier. In fact, the court of bankruptcy in another case of In re Continental Airlines, Inc. determined that preplan bankruptcy is a convenient measure that can be undertaken to achieve successful reorganization as a way through which a debtor is able to gain the favor of its creditors prior to applying bankruptcy.

Premake administration was declared an official insolvency procedure in the United Kingdom in 2003 and would provide a cheaper and more beneficial solution of restructuring the business in the event of financial strain. Preadd insolvency is governed in Insolvency act 1986 and Insolvency rules among other numerous rules.

In the United Kingdom prepack Insolvency is provided under the Insolvency act of 1986. It involves an administrator to administer affairs and assets of the company via prepack. The administrator is to prepare and present to the court a report on the approach to be taken in prepack and its inevitable impact on the creditors of the company. A prepack plan of a firm should be creditors approved in order to be put in place under Insolvency Act of 1986.[7] The court will inquire into the plan on whether the plan is fair and equal to the creditors as a condition of approving or not approving of the plan. The reasonableness and care of the planning done by the administrator by the court will also be considered.

The prepack insolvency in UK alongside the Insolvency Act 1986 is also under an assortment of other laws and regulations. To look at the example, Directors Company Disqualification Act 1986 stipulates the disqualification of a director in the case of misbehaviour regarding the insolvency of the company.[8] The section of the Financial Services and Markets Act 2000 that requires the companies to disclose some information to their investors regarding the

[7] Section A12, The Insolvency Act, 1986.
[8] Section 8 ZA, Company Directors Disqualification Act, 1986.

prepack plan is applicable.[9] The Pensions Act 2004 requires specific prepack plans to impact on the benefits of the employees.

The industry also has several guidelines and best practices which are presumed to be used by companies in their involvement in prepack insolvency. As an instance, following the recommendation of Graham Committee, the Statement of Insolvency Practice 16 (SIP 16) establishes the best practice of the communication and disclosure of information pertaining to a prepack plan.[10] In some circumstances, the Pre-pack Pool is a voluntary initiative which is used to offer an independent verification of the prepack plans so as to increase the level of transparency and credibility of the prepack process.

Irrespective of these laws and regulations, prepack insolvency has been criticized to some extent in the UK. Critics say that the process is subject to misuse by the unscrupulous directors who might want to avoid their liabilities to creditors. In an attempt to resolve these issues, the government has come up with some reforms to the prepack procedure over the past few years. The introduction of the Small Business, Enterprise and Employment Act 2015 that makes companies disclose more information to their creditors about prepack plans is one of them. It is also within the powers of the Secretary of State of Business, Energy and Industrial Strategy of regulating the prepack process under the Act, and to ensure that companies should seek independent advice prior to entering into any prepack plan.

Irrespective of these fears, prepack bankruptcy remains a popular mode of restructuring of failed businesses, particularly in the economic crunch periods. It is expected that prepack insolvency will continue to hold its relevant position in the business and financial spheres as the world economy adjusts to the emerging challenges and alterations. Despite some advantages associated with the prepack bankruptcy, the procedure remains controversial and requires careful consideration by all the involved parties to ensure the lack of such problems as transparency and fairness. This study aims to understand the international set-up on prepack insolvency and contrast it with the Indian scenario to gain a deeper insight into the topic.

---

[9] Section 356, Financial Services and Markets Act 2000.

[10] LexisNexis, "Statement of Insolvency Practice (SIP) 16 - Background and Key Amendments", *LexisNexis* (2015), https://www.lexisnexis.co.uk/legal/guidance/statement-of-insolvency-practice-sip-16-pre-packaged-sales-inadministration.

2. LITERATURE REVIEW

The paper "*Pre-Packaged Insolvency Regulation: What Can India Learn from the United Kingdom and the United States?*" by M.P. Ram Mohan and Vishakha Raj explore the concept of pre-pack insolvency through a comparison of the two regulatory models that are practised in the United Kingdom and the United States and offer these two countries as possible benchmarks that can be adopted in the Indian pre-pack case[11]. Their research notes that the pre-pack mechanism has several important advantages, such as faster resolution process, lower procedure costs, and maintenance of the going concern value of the debtor, and at the same time encourages the restructuring as one of the desired policy outcome. Simultaneously, it seems that the authors make a critical admission related to the inherent issues of pre-pack arrangements, especially the paramount lack of transparency regarding the process and the increased potential of the conflicts of interest.

The paper will also engage in an elaborate analysis of the legal frameworks which are in use to govern pre-pack insolvency in the UK and the US which are largely considered one of the most advanced systems in the world. The SIP 16 regulates pre-pack transactions in the United Kingdom and puts in place certain disclosure and transparency requirements on the insolvency practitioners. In their opinion, though the SIP 16 exposes the process to a greater level of supervision and monitoring, they claim that the framework remains a target of criticism because of the lack of enforceability and the nagging challenges of potential conflict of interests in pre-pack transactions. United States Prepackaged insolvency Prepackaged insolvency in the United States is channeled in the Bankruptcy Code and occurs in debtor-in-possession (DIP) restructurings as well. The authors observe that the restructuring of DIP is more flexible and open than other systems of insolvency and the consideration of its perceived abuse and conflict of interests is also an issue of concern.

[11] M.P. Ram Mohan and Vishakha Raj, "Pre-Packaged Insolvency Regulation: What Can India Learn from the United Kingdom and the United States?", IIMA Working Paper (2020).

Then authors present the applicability of the buildings of such regulatory frameworks to the situation in India. They pay attention to the point that the IBC is not the kind of pre pack insolvency that is expected by the Indian legal order. They however note that the use of prepack solvency has been carried out in an informal way in India and what is needed is guidelines that will give assurance on the issues involved and make the procedure transparent and fair.

The authors argue that there is a high probability of India relocating to U.K. and U.S. as a benchmark in defining laws on pre-pack insolvency. They placed emphasis upon the transparency/disclosure/requirements and trying to settle the conflicts of interest. They also emphasize the need to make the process less tense in the specifics of the Indian market and its dynamics.

Lastly, authors suggest that regulatory systems of UK and the US could be taken as a model of developing prepack insolvency system in India. The latter point out that there needs to be a moderate way that enables being open, equitable, and agile throughout the process and take into account the details of the Indian insolvency scenario. In most cases, the paper sheds light on the interpretation of the concept of prepack insolvency and regulatory framework in the UK and the US and provides practical suggestions to India as it considers the implementation of prepack insolvency as a means of sound and expediency resolution of insolvency.

Introducing Pre-packs in India A Useful Tool in Times of COVID-19? by Aparna Ravi addresses the opportunities and possible difficulties of implementing pre-packs as the instrument of resolving insolvency in India, and especially in the situation of the COVID-19 pandemic[12].

The process of economic effects of the pandemic on business people and the need to identify efficient and effective insolvency resolution systems are outlined in the paper. The author also hints that before the actual insolvency process the negotiated agreement between the creditors and the debtor may be pre-packed which may make a good solution in addressing the issues the pandemic may cause. The paper reflects on the benefits of the pre-packs that

[12] Aparna Ravi, "Introducing Pre-packs in India: A Useful Tool in Times of COVID-19*?",* Oxford Business Law Blog.

include the speed of resolution, cost-effective, and the capacity to retain cost of going concern value to the choice of flexibilities in restructuring. The other cogitation of the author is the working of pre-packs in India where the formal procedure of insolvency of IBC can be monotonous and complicated.

According to the author, it is an equally likely event that despite the alleged good mechanism that may be found in the pre-packs, it is likely to be subjected to countless challenges, which are transparency, the possibility of conflicts of interests, and exploitation of opportunities. It shall argue out the good regulatory environment position with associated risks and efficiency, equity and transparency of pre-pack process in the paper.

The regulation regime of India is also analyzed by the author and provisions that are incorporated in IBC where no pre-packs are being sold. The paper will suggest the justification as to why, the statutory provision of pre-packs in India needs to be picked up and how the provision of pre-packs becomes possible within a context of pre-insolvency law which can be relevant in India as well. Since the building blocks which ought to be incorporated in the regime which would govern the pre-packs in India, the author notes that the transparency and disclosure considerations, the adequate protection of the interest of the creditors, the adequate protection against abuse, the adequate dispute settlement mechanism among others would be implemented in them. The stakeholder consultation is the most relevant case of pre-pack regulation that is evident in the paper.

The author proceeds to allude to how the implementation of pre-packs as a pre-packs resolution solution will not be detrimental in the current economic state especially in the current state of the economic state during the post-COVID-19 period. In the paper it can be indicated that proper conservation would need to be established that would promote equitable and free use of pre-packs that would be the best interest of all the stakeholders[13].

To conclude, the paper Introducing Pre-packs in India - A Useful Tool in Times of COVID-19 offers insights into the possible benefits and limitations of the proposed mode of insolvency resolution in India to introduce pre-packs. The paper stresses that the market should adopt a solid regulatory framework to guide the concerns and to promote clarity,

[13] ibid

equity, and responsibility in the pre-pack process and points at possible benefits of pre-packs in the Indian environment, especially in such trying times, as the COVID-19 pandemic.

In the article titled Pre-packaged Insolvency in India: Lessons through the USA and the UK, the author of the article, Himani Singh[14], discusses the idea of pre-packaged insolvency as a practical way to solve corporate insolvencies in India and relies on the experience of the United States (USA) and the United Kingdom (UK) in adopting the same practice of implementing pre-packaged insolvency.

This paper has begun by establishing the long-standing dilemmas facing the Indian insolvency law and how the increasing number of cases of corporate distress in India has led to the need to implement new processes to solve the problems. It then presents the notion of pre-packaged insolvency which is a description of a process where both the debtor and the creditors agree and negotiate a strategy of restructuring, prior to the actual commencement of the insolvency. This strategy is introduced as a method to speed up the process, derive the most out of the creditors and limit any interference to the business of the debtor.

The paper provides an in-depth analysis of regulatory frameworks applied to pre-packaged insolvency in the experience of the United States and the United Kingdom and draws major legal and practical concerns related to their application to the paper. It assesses the achievements and difficulties that have been faced in the working process of pre-pack regimes with much focus as to how the experience that is comparative can make good reference points towards creating a viable pre-pack insolvency regime in India.

By making a specific reference to the United States, the paper breaks down the Chapter 11 bankruptcy framework, according to which, debtors are allowed to present a reorganisation plan that would be approved by their creditors. The paper describes the benefits of pre-negotiated bankruptcy, which are a more active problem-solving process, a considerable reduction in costs, and maintenance of the enterprise of the value of going concerns.

[14] Himani Singh, 'Pre-packaged Insolvency in India: Lessons from USA and UK', (2002) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3518287.

Then comes a discussion of the applicability of pre-packaged insolvency to the situation in India, considering the peculiarities of the Indian insolvency regime, especially including the Insolvency and Bankruptcy Code, 2016. This paper suggests that adoption of pre-pack mechanisms in India would enable the widening of the area of resolution outcomes, increase stakeholder involvement and increase creditors value realisation. Simultaneously, it severely recognizes impediments to successful implementation including regulatory and procedural restraint, a lack of stakeholder sensitivity on the issue and the threat of conflict of interest. The authors however indicate that these issues can be solved by a strong regulatory framework, stakeholder activism, and increasing efficacy of the process in the Indian system so that it becomes just and effective.

Lastly, the paper concludes by drawing important lessons that India can learn in the experience of the United States and the United Kingdom. These are the need to have a robust and enforceable regulatory framework, the need to improve on the levels of disclosure and transparency to create confidence with the stakeholders and the need to ensure good oversight mechanisms to deter any misuse of the pre-pack process. It has also been brought out that stakeholder involvement is important in the pre-packaged insolvency process as there is a need to include the creditors, the employees/ other concerned parties as it would help introduce fairness and accountability to the process.

The paper Pre-packaged Insolvency in India: Lessons in the USA and UK, by Himani Singh, may offer much information concerning the aspects of pre-packaged insolvency and its potential applicability to the Indian case. It talks about regulatory systems and experiences of USA and the UK in the adoption of pre-packaged insolvency with the advantages, difficulties and lessons present in the jurisdictions. The article confirms the relevance of sound regulatory mechanisms, engagement by the stakeholders.

John Yozzo and Samuel Star in a paper titled For Better or Worse, Prepackaged and Prenegotiated Filings Now Accomplish the Majority of Reorganizations[15], give a description of how the prepackaged and prenegotiated filings have become an important aspect in the reorganization of the corporations. The authors assert that such filings have become a new

[15] John Yozzo and Samuel Star, "For Better or Worse, Prepackaged and Prenegotiated Filings Now Account for Most Reorganizations," *ABI Journal* (2018).

standard of restructuring of troubled companies in terms of the number of cases, as well as the sum of debt.

The article begins with the short explanation of the classical Chapter 11 process of bankruptcy organization according to which the company gets into the state of bankruptcy and negotiates with the creditors on how they should rearrange the plan. This may involve a lengthy process that may turn out to be costly, as well as lengthy before a court battle could ever be settled through the several stakeholders amid all the stakeholders. Yozzo and Star however observe that the use of pre packaged and pre negotiated filings became the replacement of this traditional procedure.

Pre Packaged Filing: It occurs in a situation whereby an arguably bankruptcy has been filed in which the debtor has already made up its mind on a restructuring plan with the creditors prior to declaring itself as a bankrupt. Pre negotiated filings on the other hand is where a debtor and its key creditors have worked out a negotiation of the nature of a restructuring plan prior to filing bankruptcy but before it has been fully created.

The authors believe that the focus of the bankruptcy courts as a settlement has been eclipsed in favor of a rubber stamp since the terms of restructuring plan have already been agreed upon by debtor and the creditors. According to Yozzo and Star, such a change might have a consequence on how bankruptcy judges are involved in the process of monitoring and authorizing reorganization plans.

Summing up, according to Yozzo and Star, prepackaged and renegotiated filings are nowadays the prevailing way of corporate reorganization, and there are both advantages and disadvantages of such a choice. As much as these filings provide a better, more efficient procedure, there is a likelihood that some of the stakeholders will be treated less favorably, and this process is likely to alter the position of the bankruptcy courts. According to the authors, more research and analysis is required to comprehend fully the implication of this trend and also the effect of the same to the corporate structure.

Comparative Insolvency Law: The Pre-Pack Approach incorporate Rescue author, Alexandra Kastrinou has written about the current trend in the modern day insolvency law towards corporate rescue, centering attention on pre-pack sale[16].

Authors SP Ferris and RM Lawless in The Expenses of Financial Distress: The Direct Costs of Chapter 11 take a look directly at the direct costs of Chapter 11 bankruptcy which is a legal process by which financially troubled firms restructure their debtedness and proceed with their businesses. The authors argue that although Chapter 11 bankruptcy could be one of the means to assist companies to come out of the financial turmoil within the company, it also implies excessive direct expenditures and may influence the effectiveness of the entire process.

The paper begins by stating that Chapter 11 bankruptcy is associated with various direct costs. According to Ferris and Lawless, such expenses involve legal fees, administrative fees, e.g. attorney fees, court fees, and other fees of professional advice e.g. a financial advisor, a financial accountant. The pre-pack insolvency framework still has some key elements that have not been properly spelt out and these are how the resolution professional is to be appointed, the extent of his or her powers, the nature of the negotiation process, how operational creditors are to be treated and how the negotiating procedure should be presented to the National Company Law Tribunal (NCLT).

What is still less clear is the role of the Resolution Professional (RP), whose functional autonomy seems to be limited by the compulsory permission of the NCLT. Conversely insolvency practitioners in other jurisdictions including those in the United States are obligated to operate in the best interest of all the stakeholders as opposed to promoting the interests of a given group of creditors. However, with under the Indian framework, the NCLT must give the verdict to the resolution plan provided that statutory conditions are met and in this regard, the RP has limited authority to ensure any relevant oversight over the pre-pack process. Such a limited area of the work of the judicial and professional protection provokes reasonable questions about the strength, impartiality and the overall validity of the obtained plan of solution.

[16] Alexandra Kastrinou, "Comparative Insolvency Law: The Pre Pack Approach in Corporate Rescue" *26 Int'l Insolvency Rev. 229(2017).*

On top of these procedural and institutional deficiencies, there remains a threat of an overbearing impact of stakeholders that persists to define the pre-pack insolvency regime. In the situations where pre-pack processes are conducted with a lack of transparency and inclusiveness, the risk of unequal treatment relating different classes of creditors is an issue that has persisted. The authors urge more studies and investigations on this subject to offer enlightenment to the policy makers, practitioners as well as scholars in corporate restructuring. It is noteworthy that this paper is dated 2000 and as such many changes have been implemented in the US law. Nonetheless, it can be of great assistance to the prepack insolvency regime in India since it is still in its early years.

The article written by Geoffrey Yeowart, Encouraging Company Rescue: What Changes are Required to UK Insolvency Law is based on the necessity of reforms in the insolvency law of the UK to encourage rescue of financially strained companies[17]. Yeowart claims that the existing insolvency regime in UK is excessively liquidation-driven, and does not do much to revive and cure ailing firms.

In its opening section, the article reveals the conventional attitude of UK insolvency law, which is based on the interests of creditors; it does not take into account any other party i.e. the debtor company. Yeowart explains that such a course of action is likely to attract the following consequences to include selling companies that may never be able to become financially viable, thereby, costing hundreds of jobs and economic opportunities and prospects being able to redeem their performances.

Yeowart proceeds to suggest some corrections to the UK laws of insolvency that would encourage the salvaging of the firms. One of the radical changes that he suggests is the presence of a debtor-in-possession (DIP) model that would allow managers of the troubled organization to submit gracefully amidst being insolvent. That is what is being done in the United States, and that will enable the company to continue its operations and aim to achieve a successful turnaround instead of total liquidation.

[17] Geoffrey Yeowart, "Encouraging Company Rescue: What changes are required to UK Insolvency Law" 3 *Law & Financial Markets Review* (2009)

The other aspect that the author explains is that affordability of loan facilities to struggling businesses must be implemented. Rather it is the UK he is suggesting that discover financing of debtor-in-possession to support the companies in gaining access to fresh funding in odious of their operations to be able to perform the rescue measure. This would according to Yeowart provide the companies with the liquidity to enact a restructuring agenda, and have a positive probability of rescuing the company.

Yeowart also points out that the existing insolvency act must be reformed to provide the most optimum balanced resolution to the interests of all stakeholders like employees, shareholders, creditors among others. His replacement to law is not more severe he suggests more contract and negotiation to a company in debt and its stakeholders e.g. the possibility to make a contract and an agreement more efficient and faster in realizing changes or canceling the contracts and agreement.

The second measure that Yeowart suggests is the implementation of an organized rescue scheme along with the lines of the Chapter 11 bankruptcy scheme in the United States. Such a model would offer an orderly restructuring of financially troubled firms, by placing them in a formalized setting that would be managed and under which restructuring discussions would be organized. According to Yeowart, this type of system would bring about greater confidence and trust amongst all stakeholders in the system, thus making the corporate rescue of the businesses at risk of financial troubles more probable[18].

Yeowart also stresses the need to enhance pre-insolvency rescue mechanisms on the companies that have already started in the relatively serious financial difficulties. He proposes the need to have increased focus on promoting early intervention, especially through convincing struggling companies to consult specialist advice offered by consultants and financial consultants earlier. The problem of early engagement is that with bankruptcy as an inevitable outcome, earlier engagement would enable companies to investigate a broader spectrum of restructuring options and take corrective actions before it is too late.

Furthermore, Yeowart recommends total transformation in the UK insolvency regime so that business rescue is promoted at the expense of liquidation wherever appropriate. Some of the

[18] Ibid.

reforms he suggests include the introduction of debtor in possession model, enhancement of the debtor in possession financing, increased flexibility in the process of restructuring and the institution of formal rescue process. Yeowart argues that these reforms would go a long way in enhancing the chances of rescuing the failed businesses, retaining jobs, protecting economic value, and bringing a much more functional and equitable insolvency regime in the United Kingdom.

In his article, the Ever-Shrinking Chapter 11 Case, Norman N. Kinel discusses the alterated nature of Chapter 11 bankruptcy proceedings in the United States[19]. As Kinel such cases of Chapter 11 have been progressively shorter, leaner, and further disassociated with traditional and long-term goals of reorganisation. Evolution has led to this, as he believes, and gives rise to what he term as the ever-reducing Chapter 11 case which is a symptom of a wider change in how corporate bankruptcy works in the US.

The article illustrates the development of the traditional Chapter 11 process that has been formulated as a channel that grants the struggling company a channel through which it can re-monetize its debts and operations without stopping its business processes.

In view of Kinel, the cases of Chapter 11 are abridged, and therefore, it is true that costs to the debtors will be saved, but on the other hand, it would restrict the choice by the unsecured creditors to take part fully in the process, thereby, resulting in a reduction of the recovery of some of the stakeholders. The author also writes that Chapter 11 case has also been shrinking and this has led to changed roles and responsibilities of the banking professionals who are currently compelled to work efficiently and effectively to pursue the shortened schedule and the dynamics of a contemporary Chapter 11 case.

Kinel further says although the Chapter 11 case ever-militant can be beneficial in terms of speed and efficiency, it remains a problem to various stakeholders. He indicates that there is a necessity to give a keen eye on the outcome of such reforms on all concerned people and suggests that further reform and amendments would be necessary to design the best mix of expediency and fairness in Chapter 11 bankruptcy proceedings.

[19] Norman N. Kinel, "*The Ever-Shrinking Chapter 11 Case"*, (1994) 69 Am. Bankr. L.J. 153.

Reports

The written report on Graham Review into Pre-pack Administration by Teresa Graham is a well-written in-depth report that examines the issuance of pre-pack administration as a mechanism of insolvency in the United Kingdom (UK) and proposes the methods of making the process more efficient and transparent[20]. The review realizes the merits of pre-pack administration since it can save employment and guarantee optimal creditors value and a more efficient and quicker insolvency resolution. However, it also demonstrates the problems connected with mass media presence gap, the potential conflict of interests and unfairness in the procedure.

The review also provides different suggestions to address these problems and supplement pre-pack administration process. These include introduction of self-governing regulatory body to regulate pre-packs, required compliance to amended SIP 16 as well as stricter rules governing pre-packs by creditors and other interested parties. The other proposal that will also be presented in the review is the improvement of the role of Pre-Pack Pool which is an industry-driven initiative and is capable of providing an independent review of the pre-pack proposals.

In addition, the report suggests some measures to enhance transparency in the pre-pack processsuch as guaranteeing the divulgation of values and information of the parties involved and giving the reasoning of the process chosen to be used in the pre-pack process. The review will also make recommendations on how it can handle the potential conflict of interest by making few of the related parties in the acquisition of assets in pre-pack administrations. Secondly, the report expresses the need of stakeholders in it i.e. participation/involvement/ consultancy in the process when making any reforms in the process of pre-pack administration. Figure of the current position in the UK in pre-pack sales in Pre-Pack Sales in Administration Report 2020 may help in the perception of the usage, regulation of pre-pack sales and its influence potential.

The evaluation of the size and economic importance of pre-pack sales in the UK administration system is performed by a report issued by the United Kingdom Government,

[20] Teresa Graham, Graham Review into Pre-pack Administration (June 2014).

the Department against Business, Energy and Industrial Strategy (BEIS). Based on empirical data and the research work carried out in 2019 and at the beginning of 2020, the report aims at assessing the effectiveness of the existing regulatory regime in the sphere of pre-pack transactions and determining the areas where the further regulation tightening might be necessary[21].

Among the main conclusions made by the report is that pre-pack sales have become one of the most popular tools among the corporate administrations. By 2019 the pre-pack transactions were estimated to make about 22 per cent of all the administration, and this amounted to about 3.3 billion pounds. These statistics emphasize the ongoing applicability of the pre-pack sales as an effective means of selling off the distressed enterprise assets within limited timeframes and in most cases, business continuity can be achieved by selling the enterprise to a new owner.

This report also suggests the creation of a pre-pack pool so as to have independent review on the pre-packs sales of the connected parties. This body would modify the reasonability and good faith in the fulfillment of the transaction which will supply another protection against the possibility of misusing the pre-pack process thus ensuring the trust of integrity.

This is a recommendation to remove the release of transparency and development of the confidence in pre-packs sales namely, in case there is a potential conflict of interest or any concerns regarding the fairness of the sale process.

The report also recommends improvement by way of changes to the regulatory regime governing pre-pack sale to bring about a new moratorium period to the troubled business to allow time to seek the possibilities of turning around without the danger of the instituting of the debt owed to the creditor takeover measures. This would enable the businesses in the financial distress breathing space and presumably constrain pre-pack sales as the only option they have left.

On the whole, it can be concluded that the report Pre-Pack Sales in Administration Report 2020 indicates existing controversy of the concept of pre-pack sales in the United Kingdom

[21] Department for Business, Energy & Industrial Strategy (UK), *Pre-Pack Sales in Administration Report 2020*.

and the necessity to make such a process more transparent, fair, and influential by stakeholders. The report recommendations were meant to help solve these issues and guide towards the formulation of a more likely regulation regime on the pre-pack sales, but balancing the business was rushing to sell the assets fast and perhaps remain in business.

It is notable that any change which ought to be effected about issues regarding regulation dictating the sale of pre-pack is to be proceeded with care and with reference to the stakeholders whom the report presented[22]. However, the report is taken as the substantial step in the ongoing debate on the subject of pre-pack sales in administration in the UK, and offers the ideas, in how the process might be conducted to be fair, transparent.

The available literature gives us an opinion of the legal regulation and framework of UK and the US. It also helps us understand the limitations of the prepack legal regimes in this country and consequently helps forge robust prepack insolvency laws in India. It is important to note that the laws regulating prepack bankruptcy are still unfolding and there is hardly any literature that systematically analyses the legal realm in this regard. The challenges faced by other countries and the literature available in those can help us build a map to regulate prepack insolvency while taking into consideration the interests of small businesses and MSMEs which prepack insolvency applies.

3. RATIONALE AND SIGNIFICANCE OF THE STUDY

The growing complexities of modern commercial transactions, coupled with the increasing incidence of corporate insolvencies, have underscored the need for efficient, time-bound, and value-maximising resolution mechanisms.[23] In this context, pre-pack insolvency has emerged as a significant restructuring tool, enabling a consensual and pre-negotiated resolution between debtors and creditors prior to the commencement of formal insolvency proceedings.[24] Such a mechanism seeks to preserve the going concern value of enterprises,

[22] ibid
[23] *Report of the Bankruptcy Law Reforms Committee* (Ministry of Finance, Government of India, 2015) 5–7.
[24] *Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process* (Ministry of Corporate Affairs, 2020) 1–3.

reduce procedural delays, and minimise the costs typically associated with traditional insolvency processes.[25]

Globally evolved but recently introduced in India, pre-pack insolvency has been incorporated within the framework of the Insolvency and Bankruptcy Code, 2016, particularly for Micro, Small and Medium Enterprises (MSMEs), reflecting a shift towards more flexible and debtor-in-possession models.[26] However, its implementation raises important concerns relating to transparency, creditor protection, and procedural fairness, which necessitate careful legal scrutiny.[27]

The present study assumes significance in examining the conceptual foundations, legal framework, and practical implications of pre-pack insolvency within the Indian context. By analysing legislative provisions, judicial pronouncements, and institutional reports, the study seeks to identify existing gaps and evaluate the effectiveness of the pre-pack mechanism as an alternative to the conventional Corporate Insolvency Resolution Process.[28]

In light of the contemporary economic environment, where timely resolution of stressed assets is crucial for maintaining financial stability and fostering economic growth, this study contributes to the ongoing discourse on insolvency reforms in India.[29] It endeavours to provide insights that may assist in strengthening the regulatory framework and enhancing the effectiveness of insolvency resolution mechanisms.

4. STATEMENT OF PROBLEM

In 2021, the Insolvency and Bankruptcy Code was amended and prepack insolvency was introduced, as per the law of India. The Insolvency and bankruptcy code (Amendment), 2021 is one of the recent insolvency reform systems. It was passed by the Indian parliament and his assent added by the president on 4 March 2021. Prepack Insolvency The New Beginning

[25] *Insolvency Law Committee Report* (Ministry of Corporate Affairs, February 2020) 15–18.
[26] Insolvency and Bankruptcy Code, 2016 (as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021), ss. 54A–54P.
[27] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17.
[28] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
[29] Insolvency and Bankruptcy Board of India, *Annual Report 2022–23* (IBBI, 2023) 25–30.

to Corporate Insolvency in India A highly popular game-changer in the realm of the Indian corporate insolvency, the notion of Prepack insolvency is one of the legal reforms that was introduced by the IBC Amendment Act 2021.

In India, the Insolvency and bankruptcy board of India (IBBI) has come up with regulations and guidelines which are observed to implement the prepack insolvency process. Remember that prepack insolvency was one of the controversial issues that had been introduced to India. Having extensively discussed the issue, the Bankruptcy Law Reforms Committee (BLRC) decided that there is yet no sufficient maturity in the Indian market, which would permit out-of-court restructuring without the presence of the National Company Law Tribunal (NCLT).

This move is after a lot of debate on whether pre-packs are possible in the country.[30] The IBBI however published a report in October 2020 termed as the "MCI Pre-pack Report" which outlined its intended pre-packaging policy in India. The Indian law makers were hindsight aware of the rules of prepack insolvency process in both UK and US. The issue of pre-packs and the value that they bring to fairness and transparency have been treated differently in the UK and the US. Based on the sort of pre-pack regime in place, these difficulties come in a variety of shapes and sizes. In the UK, a pre-pack can be finished without the consent or even input of the creditors.[31] Unsecured creditors are exposed participants in the process because the prepack can evade creditors' formal voting rights. Pre-packs can be executed in the US via two different channels, one of which necessitates creditor permission and the other does not.[32]

Prepack insolvency was introduced in India first by way of an Ordinance known as the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 and then confirmed by the Parliament as Insolvency and Bankruptcy Code (Amendment) Act, 2021 (the Act).

---

[30] Bankruptcy Law Reform Committee, "The Interim Report of the Bankruptcy Law Reform Committee", THE MINISTRY OF FINANCE 79 (Feb. 2015), https://www.finmin.nic.in/sites/default/files/Interim_Report_BLRC_0.pdf.

[31] Vanessa Finch & David Milman, *Corporate Insolvency Law: Perspective and Principle* 372-73 (Cambridge University Press, London, 2017).

[32] Bo Xie, *Comparative Insolvency Law: The Pre-pack Approach in Corporate Rescue* 8-9 (Edward Elgar Publisher, 2016)

In India prepack insolvency is only applicable to MSMEs.[33] This was introduced during the COVID-19 pandemic for quick and cost-effective insolvency resolutions. A "base plan" may be negotiated with creditors under this new system, and corporate debtors who have defaulted by at least 10 lakh (£9,800) are qualified for the PPIRP.[34] The corporate debtors may approach the National Company Law Tribunal (NCLT) to begin the process once 75% of their members and 66% of their unrelated financial creditors accept the plan to begin the PPIRP.[35] The agreed-upon plan is then presented to the National Company Law Tribunal (NCLT) for approval. The NCLT oversees the insolvency process in India and has the authority to approve or reject the restructuring plan. However, it is important to keep in mind that the section 29A ineligibilities continue to apply to the PPIRP (aside from the ones regarding non-performing assets and default on guarantees), and corporate debtors who would be barred from starting a PPIRP under section 29A are not allowed to do so.[36] In addition, pre-packaged insolvency was introduced in India to provide greater certainty to stakeholders. The pre-packaged insolvency process is time-bound. The entire process, including the submission of the resolution plan to the NCLT must be completed within 120 days. This ensures that the process is completed quickly and efficiently, reducing the costs and delays associated with formal insolvency proceedings. It is also more certain to the creditors as they can be sure that the resolution plan shall be executed within a given time span.

It also does allow resolution professional to be appointed. On the application of the prepack insolvency, the NCLT designates a resolution professional (RP) to facilitate the resolution process.[37] The RP will be important in ensuring that the debtor and the creditors negotiate as well as ensuring that the resolution plan will be in the interest of all parties.

[33] Section 54 A (l)
[34] *Supra* note 14.
[35] *Ibid*
[36] *Supra* note 17.
[37] Supra note 17.

Nevertheless, prepack insolvency, similar to any other system of laws, too, has its own issues and problems that must be taken into consideration in order to serve as an efficient tool.[38] The lesser involvement of operational creditors is the first and the initial issue. Pre-pack insolvency procedures are quite much negotiation based among the debtor, the financial creditors of the debtor, and usually a mutually agreed resolution plan is arrived at. The other key stakeholders of the insolvency ecosystem under this model, especially operational creditors are not always given the same room to participate. Since the financial creditors usually enjoy the bargaining power which is relatively stronger than that of the operational creditors, then the latter tend not to have much say in the terms of the resolution. Due to this, their claims and interests might not be properly met at the negotiation stage which will form imbalances and potential inequity in the formulation and final outcome of the resolution plan.[39]

The Insolvency and Bankruptcy Code (IBC) consists of some structural issues which have not fully implemented the full dynamics of the pre-pack insolvency system. The pre-pack insolvency framework still has some key elements that have not been properly spelt out and these are how the resolution professional is to be appointed, the extent of his or her powers, the nature of the negotiation process, how operational creditors are to be treated and how the negotiating procedure should be presented to the National Company Law Tribunal (NCLT).

What is still less clear is the role of the Resolution Professional (RP), whose functional autonomy seems to be limited by the compulsory permission of the NCLT. Conversely insolvency practitioners in other jurisdictions including those in the United States are obligated to operate in the best interest of all the stakeholders as opposed to promoting the interests of a given group of creditors. However, with under the Indian framework, the NCLT must give the verdict to the resolution plan provided that statutory conditions are met and in this regard, the RP has limited authority to ensure any relevant oversight over the pre-pack process. Such a limited area of the work of the judicial and professional protection provokes

[38] Bolanle Adebola, "Transforming Perceptions: The Development of Pre-pack Regulations in England and Wales" 43 *Oxford Journal of Legal Studies* (2023).
[39] https://www.azbpartners.com/bank/grr-the-art-of-the-pre-pack-edition-2-india/.

reasonable questions about the strength, impartiality and the overall validity of the obtained plan of solution.

On top of these procedural and institutional deficiencies, there remains a threat of an overbearing impact of stakeholders that persists to define the pre-pack insolvency regime. In the situations where pre-pack processes are conducted with a lack of transparency and inclusiveness, the risk of unequal treatment relating different classes of creditors is an issue that has persisted. Debtors might also manipulate the process to have the liabilities disbanded or have assets that they sell at low prices, and the creditors may liaise with debtors to come up with resolution plans that do not fully serve the interests of other interested parties.[40] This will compromise the quality and fairness of the pre-pack insolvency procedure and will pose questions on unethical behaviour.

The next concern of the prepack insolvency that needs to be further analyzed is its correlation with the anti-competition practices. The intersection of the prepack insolvency law and competition law are a confusing but also essential issue and this must sufficiently be considered in the practice of insolvency regime. The anti-trust laws have been used in business with the aim of promoting competitions that avoid any monopoly and safeguard the consumer. On the one hand, such a need of prepack insolvency justifies its use, as it is the process that helps to realize the effective work of the ailing company and promote it to the success of the effective and fast work: the proper balance of these two spheres of the law is necessary and precondition non-vain achievements of both procedures.

Anti competitiveness in the insolvency resolution is one of the greatest issues that can occur in the process of using pre package insolvency. The financial weaknesses of the businesses or the impacts on the insolvency negotiations may be competition prices, distribution and others as causing the prepackaged insolvency of the businesses. The risk is that the resolution plan may contain anti-competitive settlements such as price fixing, divided market and collusion

[40] *Ibid*

that would prove harmful to the rivalry within the market and the impact would be negative to the consumers.[41]

One of the steps that should be employed in the resolution of this problem is to ensure that anti-competition laws have been followed in the prepack bankruptcy process. Close monitoring of the resolution plan would be necessitated in order to determine and resolve any such anti-competitive requirements. This requires extreme care on the part of the creditors who are coming together to negotiate the resolution plan and the resolution professional so as to be careful not to prejudice any anti-competition law and create an anti-competitive impact. The other factor in the disconnection between anti-competition legislation and prepack insolvency is how the resolution plan will affect the competitive environment following the resolution.[42] The solution could consist in acquiring assets or the purchasing of the business of the financially strained business by another company. This may lead to rivalry among the market or a decrease in rivalry, and may cause anticompetitive impacts.

To overcome this issue, a close consideration is to be carried out on how the resolution plan is likely to affect competition in the market. The competition authorities ought to evaluate the market concentration and the likelihood of the resolution plan to cause anti-competitive practices considering the market share, entry barriers, and the welfare of the consumer. In the event that the resolution plan has been determined to have anti-competitive effects, the competition authorities ought to apply sufficient remedies, e.g. divestitures or behavioral undertakings, in an effort to reduce the negative effect on competition.

Care should also be taken to ensure that the resolve plan does not culminate into developing a monopoly or dominant position in the market.[43] The resolution plan should also contain the fact that acquisition of undue market power by the buying entity in the plan should be avoided as this could adversely affect the consumers and competition. To avoid the scenario

[41] https://vidhilegalpolicy.in/blog/pre-packaged-insolvency-resolution-under-the-insolvency-and-bankruptcy-code-ibc-an-overview/.
[42] Matthijs Van Schadewijk, "Pushing the Boundaries between Competition and Insolvency Law: Prepacking in the UK", 5 *Nottingham Insolvency and Business Law e-Journal* (2005)
[43] *Ibid*

of abuse of dominance or establishment of monopoly, the competition authorities should investigate any of the assets or firms that are bought through the prepack bankruptcy process.[44]

Moreover, the resolution plan must not lead to the oppression of innovation or improvement of technology in the market. Businesses that are in prepack instructions can be having valuable intellectual property rights or new technology.[45] These assets should be adequately insured not so as to lead to any anti-competitive results, which are supposed to be guaranteed by the resolution plan. The competition authorities are also supposed to gauge the implications of the resolution plan to the innovations and to take the necessary steps that would be tailored in promoting the promotion of innovation and competition in the market.

The prepack insolvency resolution plans do not always serve the interest of the populace but rather it may focus on the interests of the creditors to the disadvantage of the people or it may cause market distortions. Using the act of closing a company financially challenged as an example, a resolution plan may result in the loss of jobs, supply chain and impact the consumers adversely.[46] These may cause negative implications on the competition of the market and distortion of the market forces. Creating a balance between the interests of creditors and the interests of the population and assessing the potential market distortions caused by the reference to the resolution plans to be under the plans is a very important step to correspond to anti-competition laws.

Introduction of prepack insolvency as one of the provisions of IBC Amendment Act, 2021 is a milestone to enhance the process of resolving the financial distressed companies in India. But it does not pass without its difficulties. It will be quite interesting to observe how the new insolvency regime will play out in the Indian scenario particularly when it comes to the MSMEs that this amendment was intended to save. The strength gap between those MSMEs

---

[44] *Ibid*

[45] David Kupetz, Intellectual Property Issues in Chapter 11 Bankruptcy Reorganization Cases, *IDEA: The Journal of Law and Technology* (1995).

[46] Vinson Kurian, "Pre-pack resolution process has some serious pitfalls" *The Hindu Business line* Available at https://www.thehindubusinessline.com/news/national/pre-pack-resolution-process-has-some-serious-pitfalls/article34533196.ece.

and large corporation houses is to be considered. In this study, the researcher is claimed to map and suggest vis-a-vis the prepack insolvency taking into consideration the currently limited legal framework which prevails in India.

Research Questions

1. What led to emergence of Pre Pack Resolution Process in India?
2. How Pre Pack Resolution Process in India is still at naïve stage as compared from pre pack process in developed countries like UK & US?
3. What are the benefits and challenges faced by Pre Pack Resolution Process in India vis a vis our economic structure?
4. How Pre Pack Resolution Process in India needs to be evolved keeping in mind special need of our society & challenges faced in the pandemic by the economy?
5. How can we forge a better insolvency regime that are in line with the competition laws in India?

5. AIMS AND OBJECTIVE OF RESEARCH

Indian bankruptcy law and regime are in the development stage. Pre-pack is typically a logical progression in the development of insolvency regimes. Ordinance, however, has appropriately experimented by adopting the prepack laws in a semi-controlled manner with the assistance of the court or the National Company Law Tribunal. (NCLT). From a regulated environment to one that is entirely driven by the market, law will continue to change. (as the one followed in UK and US). We can summarise by comparing IBC to a road that is being built. The objective of this research is to delve into uncharted terrain and see whether in India, we could stretch our Insolvency Regime from being formal (judicial intervention) to informal (Out of Court) and to check whether our economy have enough ingredients to propagate an up to date and resilient insolvency regime – do we have required infrastructure'; skilled professions; the markets and practices to emerge; and the stakeholders ready to understand the change in the offing, accept this and learn the process.

6. RESEARCH METHODOLOGY

This study is to be completed through the doctrinal method of research. Also the comparison analysis will be undertaken with the other two developed economies (UK and US). Close analysis of the UK, US, and India insolvency regime is going to be conducted. Subsequently advantages and disadvantages of pre-pack insolvency under each regime will be analyzed and recommendation/alteration needed will be proposed/investigated.

The author has chosen the comparative approach to research because the legal framework in India is in the most infancy stage in terms of pre-pack insolvency. The Government has introduced it during the COVID period as a way of helping small businesses and MSMEs. Therefore, the experiences of countries that have been regulating pre-negotiated bankruptcy may offer a better insight into the process thus revealing the constraints of the same. Researchers are able to find out the effectiveness, efficiency, and impact of different policy interventions, programs, or strategies through comparison.

The author will chart the similarity and dissimilarity of various cases and thus, the patterns and trends would emerge that would not be visible when they are studied on an individual basis. This comparative approach to the research will assist the researcher determine similarities, differences and relations that could be used to develop theories, ideas and descriptions. The various contributions of various legal systems, the researcher can isolate patterns, trends and relationships which can be applied to theoretical frameworks of the law which will aid in the realization of a roadmap of prepack process.

7. HYPOTHESIS/ EXPECTED OUTCOME OF THE RESEARCH

The following are the two hypotheses in connection with the above research question and Research Objectives:-

1. Dynamic and robust insolvency regimes are directly proportionate to the ease of doing business and on resolving the stress and restructuring the Corporate debtor as a going concern in India.
2. Introduction of Pre-pack insolvency in a phased manner will hand hold Indian economy to become at par with the developed economy of the world like UK and US and thereby building a strong and transparent pre-pack insolvency regime avoiding monopolization.

Tentative Chapterisation

1. CHAPTER 1: Introduction and Evolution of Insolvency Laws in India

2. CHAPTER 2: Evolution of Pre-Pack Insolvency Process in India : Need and Challenges to introduce pre- pack in India: The chapter will deal with the modality for an innovative corporate rescue and consequently how it led to the introduction of Chapter- IIIA. It will also delve into the functioning of IBC to facilitate pre-pack insolvency Resolution.

3. CHAPTER 3: Comparative Study of Pre-pack Insolvency Model in UK and US: This chapter will deal with the pre-pack regimes in the UK and the US. It will analyze the differences between the two countries and the manner in which they regulate the prepack processes.

4. CHAPTER 4: Exploring the possibility of taking Pre-pack Resolution Process outside judicial purview: The chapter will also deal with the peculiarity of the Indian scenario and how can one strike a balance between the rights of the creditors on one hand while avoiding the red-tapism that might be a side effect of judicial oversight.

5. CHAPTER 5 : Conclusion and Suggestions.

8. Bibliography

Primary Sources

US Statutes

1. US Bankruptcy Code, 1978.
2. The Securities Act of 1933
3. The Securities Exchange Act of 1934

UK Statutes

4. The Insolvency Act 1986
5. The Company Directors Disqualification Act 1986
6. The Financial Services and Markets Act 2000
7. The Pensions Act 2004

Indian Statutes

8. The Insolvency and Bankruptcy Code, 2016
9. The Insolvency and Bankruptcy Code (Amendment) Act, 2021

Secondary Sources

Reports

1. United Nations Commission on International Trade Law, Legislative Guide on Insolvency Law (June 2004).
2. Vidhi Centre for Legal Policy, Designing a Framework for Pre-Packaged Insolvency Resolution in India Some Ideas for Reform (February 2020).
3. Ministry of Corporate Affairs, Report of the Sub-committee of the Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process (October 2020)
4. Teresa Graham, Graham Review into Pre-pack Administration (June 2014).

Books

1. Vanessa Finch & David Milman, Corporate Insolvency Law: Perspective and Principle 372-73 (Cambridge University Press, London, 2017).
2. Bo Xie, Comparative Insolvency Law: The Pre-pack Approach in Corporate Rescue 8-9 (Edward Elgar Publisher, 2016).
3. Alexandra Kastrinou, Comparative Insolvency Law: The Pre Pack Approach in Corporate Rescue 290-295 (Edward Elgar Publisher, 2016).

Articles

1. Himani Singh, 'Pre-packaged Insolvency in India: Lessons from USA and UK', (2002) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3518287 .
2. Michelle Harner, "The Corporate Governance and Public Policy Implications of Activist Distressed Debt Investing Activist Distressed Debt Investing", 77 *Fordham Law Review* 703-773 (2008).
3. Nitin Nohria, Anthony Mayo and Mark Benson, "Gordon Bethune at Continental Airlines", *Harvard Business School Case* (2006).
4. Bolanle Adebola, "Transforming Perceptions: The Development of Pre-pack Regulations in England and Wales" 43 *Oxford Journal of Legal Studies* (2023).
5. Matthijs Van Schadewijk, "Pushing the Boundaries between Competition and Insolvency Law: Prepacking in the UK", 5 *Nottingham Insolvency and Business Law e-Journal* (2005)
6. M.P. Ram Mohan and Vishakha Raj, "Pre-Packaged Insolvency Regulation: What Can India Learn from the United Kingdom and the United States?", IIMA Working Paper (2020).
7. John Yozzo and Samuel Star, "For Better or Worse, Prepackaged and Prenegotiated Filings Now Account for Most Reorganizations," *ABI Journal* (2018).
8. SP Ferris, RM Lawless, "The Expenses of Financial Distress: The Direct Costs of Chapter 11" 61 *Pittsburg Law Review* (2000)
9. Geoffrey Yeowart, "Encouraging Company Rescue: What changes are required to UK Insolvency Law" 3 *Law & Financial Markets Review* (2009).

10. Alexandra Kastrinou, “Comparative Insolvency Law: The Pre Pack Approach in Corporate Rescue” *26 Int’l Insolvency Rev. 229(2017).*
11. Banerjee V. and Mehra G, “India: MSMEs & Insolvency and Bankruptcy Code” *Lex Witness, Vol. 10(3) (2018).*
12. Priyadarsini T.P. & Vishnu Suresh, “Accomodating Pre-packs in Indian Insolvency Regime” *5 RGNUL Fin. & Mercantile L. Rev. 145 (2018).*
13. Datta, Samit Kumar Maity, “Pre-Pack Insolvency Process: Latest step in the evolution of Indian Insolvency Regine” *Company Law Journal, (November 2022)*.
14. Adriaanse and Van der Rest, “Pre-pack Insolvency in the Pandemic Era”, Journal of Business Law (2020).
15. Blazy et al, “Pre-pack and European Insolvency Trends”, European Business Law Review (2021).

MANAV RACHNA UNIVERSITY

No. MRU/SVLRC/LIB: 25/02/2026

Swami Vivekananda Library and Resource Centre
Manav Rachna University

SIMILARITY VERIFICATION CERTIFICATE

Title: EMERGENCE OF PRE PACK INSOLVENCY RESOLUTION PROCESS IN INDIA: A COMPARATIVE ANALYSIS

Researcher: NEHA CHAUHAN Registration Number: 22105MRUPHD8N004

Supervisor: DR. GHAZALA ABIDIN Department: LAW

This is to certify that the above mentioned Short Synopsis/Thesis was scanned for similarity index through DRILL BIT Software on 25.02.2026 with submission ID 5299149 and the similarity index was found to be 6 %. The complete report running into 29 Pages, 10049 Word count with File Size 1826 KB, is being forwarded to the Research Supervisor/DRC/DRB for review.

The complete report of the above Short Synopsis/Thesis has been reviewed and the similarity index including AI-based writing tools are below the accepted norms as per the University Grants Commission (Promotion of Academic Integrity and Prevention of Plagiarism in Higher Educational Institutions) Regulations 2018. The Short Synopsis/Thesis may be considered for further processing.

Neha Chauhan 25/02/26
Research Scholar

25/02/26
Research Supervisor

Swami Vivekananda Library and Resource Centre Manav Rachna University
25/2/2026
Library

Excluding matches
less than 14 words

Excluding matches
less than 14 words

DrillBit

The Report is Generated by DrillBit Plagiarism Detection Software

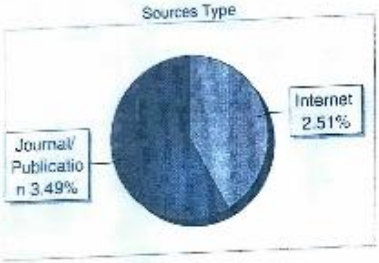
Submission Information

Author Name	NEHA CHAUHAN
Title	Short Synopsis
Paper/Submission ID	5299149
Submitted by	netrapal.library@mru.edu.in
Submission Date	2026-02-25 14:53:30
Total Pages, Total Words	29, 10049
Document type	Synopsis

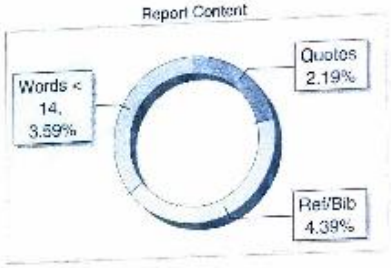
Result Information

Similarity 6 %

Sources Type



Report Content



Exclude Information

Quotes	Excluded
References/Bibliography	Excluded
Source: Excluded < 14 Words	Excluded
Excluded Source	0 %
Excluded Phrases	Not Excluded

Database Selection

Language	English
Student Papers	Yes
Journals & publishers	Yes
Internet or Web	Yes
Institution Repository	Yes

A Unique QR Code use to View/Download/Share Pdf File

... Allocation

Excluding matches less than 14 words

DrillBit Similarity Report

DrillBit

(NEHA CHAUHAN) 25/02/26

(DR. GHAZALA ABIDIN)

6	17	A
SIMILARITY %	MATCHED SOURCES	GRADE

A-Satisfactory (0-10%)
B-Upgrade (11-40%)
C-Poor (41-60%)
D-Unacceptable (61-100%)

LOCATION	MATCHED DOMAIN	%	SOURCE TYPE
1	ibbi.gov.in	1	Publication
2	Law of the Sea Report of the Secretary-General to the United Nations,- 2000	1	Publication
3	blog.scconline.com	<1	Internet Data
4	docplayer.net	<1	Internet Data
5	blog.scconline.com	<1	Internet Data
6	www.amity.edu	<1	Publication
7	blog.scconline.com	<1	Internet Data
8	Conceptions of Science and Learning Science, by Bridgham, Robert G.- 1969	<1	Publication
9	www.scribd.com	<1	Internet Data
10	cpj.org	<1	Internet Data
11	www.network.bepress.com	<1	Publication
12	Narrating Community Multiculturalism and Australias SBS Television by Smaill-2002	<1	Publication
13	izajolp.springeropen.com	<1	Publication

DrillBit

The Report is Generated by DrillBit AI Content Detection Software

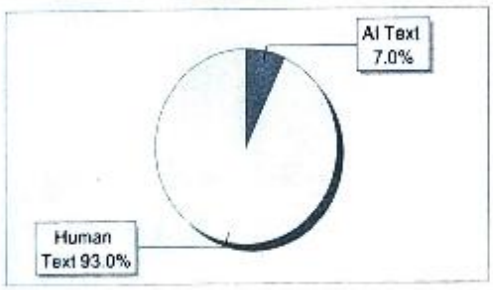
Submission Information

Author Name	NEHA CHAUHAN
Title	Short Synopsis
Paper/Submission ID	5299149
Submitted By	netrapal.library@mru.edu.in
Submission Date	2026-02-25 14:53:30
Total Pages	29
Document type	Synopsis

Result Information

AI Text: 7 %

Content Matched



Disclaimer:

* The content detection system employed here is powered by artificial intelligence (AI) technology.
* Its not always accurate and only help to author identify text that might be prepared by a AI tool.
* It is designed to assist in identifying & moderating content that may violate community guidelines/legal regulations. it may not be perfect.